

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 428 be amended to read as follows:

- 1 Page 9, between lines 14 and 15, begin a new paragraph and insert:
- 2 "SECTION 6. IC 12-26-7-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does
- 4 not apply to the commitment of an individual if the individual has
- 5 previously been committed under IC 12-26-6.
- 6 (b) A proceeding for the commitment of an individual who appears
- 7 to be suffering from a chronic mental illness may be begun by filing
- 8 with a court having jurisdiction a written petition by any of the
- 9 following:
- 10 (1) A health officer.
- 11 (2) A police officer.
- 12 (3) A friend of the individual.
- 13 (4) A relative of the individual.
- 14 (5) The spouse of the individual.
- 15 (6) A guardian of the individual.
- 16 (7) The superintendent of a facility where the individual is present.
- 17 (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- 18 (9) A prosecuting attorney or the attorney for a county office if
- 19 civil commitment proceedings are initiated under IC 31-34-19-3 or
- 20 IC 31-37-18-3.
- 21 **(10) A third party that contracts with the division of mental**
- 22 **health and addiction to provide competency restoration**
- 23 **services to a defendant under IC 35-36-3-3 or IC 35-36-3-4."**
- 24 Page 12, between lines 12 and 13, begin a new paragraph and insert:

1 "SECTION 10. IC 27-4-1-4, AS AMENDED BY P.L.178-2003,  
 2 SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND  
 3 AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED AND  
 4 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:  
 5 Sec. 4. The following are hereby defined as unfair methods of  
 6 competition and unfair and deceptive acts and practices in the business  
 7 of insurance:

8 (1) Making, issuing, circulating, or causing to be made, issued, or  
 9 circulated, any estimate, illustration, circular, or statement:

10 (A) misrepresenting the terms of any policy issued or to be  
 11 issued or the benefits or advantages promised thereby or the  
 12 dividends or share of the surplus to be received thereon;

13 (B) making any false or misleading statement as to the  
 14 dividends or share of surplus previously paid on similar  
 15 policies;

16 (C) making any misleading representation or any  
 17 misrepresentation as to the financial condition of any insurer,  
 18 or as to the legal reserve system upon which any life insurer  
 19 operates;

20 (D) using any name or title of any policy or class of policies  
 21 misrepresenting the true nature thereof; or

22 (E) making any misrepresentation to any policyholder insured  
 23 in any company for the purpose of inducing or tending to  
 24 induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the*  
 25 *policyholder's* insurance.

26 (2) Making, publishing, disseminating, circulating, or placing  
 27 before the public, or causing, directly or indirectly, to be made,  
 28 published, disseminated, circulated, or placed before the public, in  
 29 a newspaper, magazine, or other publication, or in the form of a  
 30 notice, circular, pamphlet, letter, or poster, or over any radio or  
 31 television station, or in any other way, an advertisement,  
 32 announcement, or statement containing any assertion,  
 33 representation, or statement with respect to any person in the  
 34 conduct of ~~his~~ *the person's* insurance business, which is untrue,  
 35 deceptive, or misleading.

36 (3) Making, publishing, disseminating, or circulating, directly or  
 37 indirectly, or aiding, abetting, or encouraging the making,  
 38 publishing, disseminating, or circulating of any oral or written  
 39 statement or any pamphlet, circular, article, or literature which is  
 40 false, or maliciously critical of or derogatory to the financial  
 41 condition of an insurer, and which is calculated to injure any  
 42 person engaged in the business of insurance.

43 (4) Entering into any agreement to commit, or individually or by  
 44 a concerted action committing any act of boycott, coercion, or  
 45 intimidation resulting or tending to result in unreasonable restraint  
 46 of, or a monopoly in, the business of insurance.

1 (5) Filing with any supervisory or other public official, or making,  
2 publishing, disseminating, circulating, or delivering to any person,  
3 or placing before the public, or causing directly or indirectly, to be  
4 made, published, disseminated, circulated, delivered to any person,  
5 or placed before the public, any false statement of financial  
6 condition of an insurer with intent to deceive. Making any false  
7 entry in any book, report, or statement of any insurer with intent  
8 to deceive any agent or examiner lawfully appointed to examine  
9 into its condition or into any of its affairs, or any public official to  
10 which such insurer is required by law to report, or which has  
11 authority by law to examine into its condition or into any of its  
12 affairs, or, with like intent, willfully omitting to make a true entry  
13 of any material fact pertaining to the business of such insurer in  
14 any book, report, or statement of such insurer.

15 (6) Issuing or delivering or permitting agents, officers, or  
16 employees to issue or deliver, agency company stock or other  
17 capital stock, or benefit certificates or shares in any common law  
18 corporation, or securities or any special or advisory board  
19 contracts or other contracts of any kind promising returns and  
20 profits as an inducement to insurance.

21 (7) Making or permitting any of the following:

22 (A) Unfair discrimination between individuals of the same class  
23 and equal expectation of life in the rates or assessments  
24 charged for any contract of life insurance or of life annuity or  
25 in the dividends or other benefits payable thereon, or in any  
26 other of the terms and conditions of such contract; however,  
27 in determining the class, consideration may be given to the  
28 nature of the risk, plan of insurance, the actual or expected  
29 expense of conducting the business, or any other relevant  
30 factor.

31 (B) Unfair discrimination between individuals of the same class  
32 involving essentially the same hazards in the amount of  
33 premium, policy fees, assessments, or rates charged or made  
34 for any policy or contract of accident or health insurance or in  
35 the benefits payable thereunder, or in any of the terms or  
36 conditions of such contract, or in any other manner whatever;  
37 however, in determining the class, consideration may be given  
38 to the nature of the risk, the plan of insurance, the actual or  
39 expected expense of conducting the business, or any other  
40 relevant factor.

41 (C) Excessive or inadequate charges for premiums, policy  
42 fees, assessments, or rates, or making or permitting any unfair  
43 discrimination between persons of the same class involving  
44 essentially the same hazards, in the amount of premiums,  
45 policy fees, assessments, or rates charged or made for:

46 (i) policies or contracts of reinsurance or joint reinsurance,

1 or abstract and title insurance;

2 (ii) policies or contracts of insurance against loss or damage  
3 to aircraft, or against liability arising out of the ownership,  
4 maintenance, or use of any aircraft, or of vessels or craft,  
5 their cargoes, marine builders' risks, marine protection and  
6 indemnity, or other risks commonly insured under marine, as  
7 distinguished from inland marine, insurance; or

8 (iii) policies or contracts of any other kind or kinds of  
9 insurance whatsoever.

10 However, nothing contained in clause (C) shall be construed to  
11 apply to any of the kinds of insurance referred to in clauses (A)  
12 and (B) nor to reinsurance in relation to such kinds of insurance.  
13 Nothing in clause (A), (B), or (C) shall be construed as making or  
14 permitting any excessive, inadequate, or unfairly discriminatory  
15 charge or rate or any charge or rate determined by the department  
16 or commissioner to meet the requirements of any other insurance  
17 rate regulatory law of this state.

18 (8) Except as otherwise expressly provided by law, knowingly  
19 permitting or offering to make or making any contract or policy  
20 of insurance of any kind or kinds whatsoever, including but not in  
21 limitation, life annuities, or agreement as to such contract or policy  
22 other than as plainly expressed in such contract or policy issued  
23 thereon, or paying or allowing, or giving or offering to pay, allow,  
24 or give, directly or indirectly, as inducement to such insurance, or  
25 annuity, any rebate of premiums payable on the contract, or any  
26 special favor or advantage in the dividends, savings, or other  
27 benefits thereon, or any valuable consideration or inducement  
28 whatever not specified in the contract or policy; or giving, or  
29 selling, or purchasing or offering to give, sell, or purchase as  
30 inducement to such insurance or annuity or in connection  
31 therewith, any stocks, bonds, or other securities of any insurance  
32 company or other corporation, association, limited liability  
33 company, or partnership, or any dividends, savings, or profits  
34 accrued thereon, or anything of value whatsoever not specified in  
35 the contract. Nothing in this subdivision and subdivision (7) shall  
36 be construed as including within the definition of discrimination or  
37 rebates any of the following practices:

38 (A) Paying bonuses to policyholders or otherwise abating their  
39 premiums in whole or in part out of surplus accumulated from  
40 nonparticipating insurance, so long as any such bonuses or  
41 abatement of premiums are fair and equitable to policyholders  
42 and for the best interests of the company and its policyholders.

43 (B) In the case of life insurance policies issued on the industrial  
44 debit plan, making allowance to policyholders who have  
45 continuously for a specified period made premium payments  
46 directly to an office of the insurer in an amount which fairly

represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or ~~agent~~ *insurance producer* thereof duly licensed as such under the laws of ~~this state~~ **Indiana** of money, commission, or brokerage, or giving or allowing by an insurer or such licensed ~~agent~~ *insurance producer* thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, ~~agent~~, ~~an insurance producer~~, or a solicitor duly licensed under the laws of this state, but such broker, ~~agent~~, ~~insurance producer~~, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ *producer* or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~its or his~~ *the lender's* right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ *insurance producers* or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any

1 policy of insurance covering such property through a particular  
 2 insurance company, ~~agent~~, *insurance producer*, or broker or  
 3 brokers. However, this subdivision shall not prevent the exercise  
 4 by any seller of such property or the one making a loan thereon of  
 5 ~~his, her, or its~~ the right to approve or disapprove of the insurance  
 6 company selected by the buyer to underwrite the insurance.

7 (13) Issuing, offering, or participating in a plan to issue or offer,  
 8 any policy or certificate of insurance of any kind or character as  
 9 an inducement to the purchase of any property, real, personal, or  
 10 mixed, or services of any kind, where a charge to the insured is  
 11 not made for and on account of such policy or certificate of  
 12 insurance. However, this subdivision shall not apply to any of the  
 13 following:

14 (A) Insurance issued to credit unions or members of credit  
 15 unions in connection with the purchase of shares in such credit  
 16 unions.

17 (B) Insurance employed as a means of guaranteeing the  
 18 performance of goods and designed to benefit the purchasers  
 19 or users of such goods.

20 (C) Title insurance.

21 (D) Insurance written in connection with an indebtedness and  
 22 intended as a means of repaying such indebtedness in the event  
 23 of the death or disability of the insured.

24 (E) Insurance provided by or through motorists service clubs  
 25 or associations.

26 (F) Insurance that is provided to the purchaser or holder of an  
 27 air transportation ticket and that:

28 (i) insures against death or nonfatal injury that occurs during  
 29 the flight to which the ticket relates;

30 (ii) insures against personal injury or property damage that  
 31 occurs during travel to or from the airport in a common  
 32 carrier immediately before or after the flight;

33 (iii) insures against baggage loss during the flight to which  
 34 the ticket relates; or

35 (iv) insures against a flight cancellation to which the ticket  
 36 relates.

37 (14) Refusing, because of the for-profit status of a hospital or  
 38 medical facility, to make payments otherwise required to be made  
 39 under a contract or policy of insurance for charges incurred by an  
 40 insured in such a for-profit hospital or other for-profit medical  
 41 facility licensed by the state department of health.

42 (15) Refusing to insure an individual, refusing to continue to issue  
 43 insurance to an individual, limiting the amount, extent, or kind of  
 44 coverage available to an individual, or charging an individual a  
 45 different rate for the same coverage, solely because of that  
 46 individual's blindness or partial blindness, except where the

refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

*(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.*

~~(25)~~ **(26)** *Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.*

~~(25)~~ **(27)** *Violating IC 27-2-21 concerning use of credit information.*

**(28) Violating IC 27-8-11-7 or IC 27-13-15-4 concerning provider reimbursement.**

SECTION 11. IC 27-8-11-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7. (a) An agreement between an insurer and a provider under this chapter may not contain a provision that requires the provider to offer to the insurer a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the provider offers to another insurer.**

**(b) A violation of this section by an insurer is an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.**

SECTION 12. IC 27-13-15-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4. (a) A contract between a health maintenance organization and a participating provider may not contain a provision that requires the participating provider to offer to the**

health maintenance organization a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the participating provider offers to another health maintenance organization.

(b) A violation of this section by a health maintenance organization is an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 13. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of ~~his~~ a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

At least one (1) of ~~whom~~ the individuals appointed under this subsection must be a psychiatrist. ~~who~~ However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the



1 **defendant is committed to the division of mental health and**  
 2 **addiction under this section, the division of mental health and**  
 3 **addiction shall provide competency restoration services or enter**  
 4 **into a contract for the provision of competency restoration**  
 5 **services by a third party at a department of correction facility**  
 6 **agreed upon by the division of mental health and addiction or the**  
 7 **third party contractor and the department of correction.**

8 SECTION 14. IC 35-36-3-2, AS AMENDED BY P.L.215-2001,  
 9 SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2004]: Sec. 2. (a) Whenever the defendant attains the ability  
 11 to understand the proceedings and assist in the preparation of the  
 12 defendant's defense: ~~the division of mental health and addiction, through~~

13 (1) the superintendent of the ~~appropriate psychiatric state~~  
 14 ~~institution (as defined by IC 12-7-2-184); or~~

15 **(2) the director or medical director of the third party**  
 16 **contractor, if the division of mental health and addiction has**  
 17 **entered into a contract for the provision of competency**  
 18 **restoration services by a third party;**

19 shall certify that fact to the proper court, which shall enter an order  
 20 directing the sheriff to return the defendant. The court ~~may~~ **shall** enter  
 21 such an order immediately after being sufficiently advised of the  
 22 defendant's attainment of the ability to understand the proceedings and  
 23 assist in the preparation of the defendant's defense. Upon the return to  
 24 court of any defendant committed under section 1 of this chapter, the  
 25 court shall hold the trial as if no delay or postponement had occurred.

26 SECTION 15. IC 35-36-3-3, AS AMENDED BY P.L.215-2001,  
 27 SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

29 (1) a defendant's ~~admittance to a psychiatric institution; the~~  
 30 ~~superintendent of the psychiatric institution admission to a state~~  
 31 ~~institution (as defined in IC 12-7-2-184); or~~

32 **(2) the initiation of competency restoration services to a**  
 33 **defendant by a third party contractor;**

34 **the superintendent of the state institution (as defined in**  
 35 **IC 12-7-2-184) or the director or medical director of the third**  
 36 **party contractor, if the division of mental health and addiction has**  
 37 **entered into a contract for the provision of competency**  
 38 **restoration services by a third party, shall certify to the proper court**  
 39 **whether the defendant has a substantial probability of attaining the**  
 40 **ability to understand the proceedings and assist in the preparation of the**  
 41 **defendant's defense within the foreseeable future.**

42 **(b) If a substantial probability does not exist, the ~~division of mental~~**  
 43 **~~health and addiction state institution (as defined in IC 12-7-2-184)~~**  
 44 **or the third party contractor shall initiate regular commitment**

proceedings under IC 12-26. If a substantial probability does exist, the  
~~division of mental health and addiction~~ **state institution (as defined in**  
**IC 12-7-2-184) or third party contractor** shall retain the defendant:

(1) until the defendant attains the ability to understand the  
 proceedings and assist in the preparation of the defendant's  
 defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ **admission to a state institution**  
**(as defined in IC 12-7-2-184); or**

(B) **initiation of competency restoration services by a third**  
**party contractor;**

whichever first occurs.

SECTION 16. IC 35-36-3-4, AS AMENDED BY P.L.215-2001,  
 SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3  
 of this chapter to have had a substantial probability of attaining the  
 ability to understand the proceedings and assist in the preparation of the  
 defendant's defense has not attained that ability within six (6) months  
 after the date of the:

(1) defendant's ~~admittance to a psychiatric institution; the division~~  
~~of mental health and addiction~~ **admission to a state institution**  
**(as defined in IC 12-7-2-184); or**

(2) **initiation of competency restoration services by a third**  
**party contractor;**

**the state institution (as defined in IC 12-7-2-184) or the third**  
**party contractor, if the division of mental health and addiction has**  
**entered into a contract for the provision of competency**  
**restoration services by a third party, shall institute regular**  
 commitment proceedings under IC 12-26.

SECTION 17. [EFFECTIVE JULY 1, 2004] (a) **IC 27-8-11-7, as**  
**added by this act, applies to an agreement between an insurer and**  
**a provider that is entered into, amended, or renewed after June**  
**30, 2004.**

(b) **IC 27-13-15-4, as added by this act, applies to a contract**  
**between a health maintenance organization and a participating**

- 1 **provider that is entered into, amended, or renewed after June 30,**
- 2 **2004."**
- 3     Renumber all SECTIONS consecutively.  
      (Reference is to ESB 428 as printed February 20, 2004.)

---

Representative Becker